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4 CODY R. TAYLOR,

5 Plaintiff,

6 v.

7 R. WATERS, et al.,

8 Defendants.

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10 Case No. 23-cv-00814-JSC

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12 **ORDER OF SERVICE**

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18 **INTRODUCTION**

19 Plaintiff, a California prisoner proceeding without an attorney, filed this civil rights action
20 under 42 U.S.C. § 1983. The complaint (ECF No. 1) names five officials at Pelican Bay State
21 Prison (“PBSP”), where Plaintiff is incarcerated, as Defendants. Leave to proceed in forma
22 pauperis is granted in a separate order. For the reasons discussed below, the complaint is ordered
23 served on the five Defendants based upon claims that are capable of being judicially heard and
24 decided.

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27 **STANDARD OF REVIEW**

28 Federal courts must engage in a preliminary screening of cases in which prisoners seek
29 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §
30 1915A(a). The Court must identify claims that are capable of being judicially heard and decided
31 or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious,
32 or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a
33 defendant who is immune from such relief.” *Id.* § 1915A(b). Pleadings filed by parties
34 unrepresented by an attorney must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901
35 F.2d 696, 699 (9th Cir. 1990).

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37 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the

1 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the
2 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon
3 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to
4 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to
5 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a
6 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must
7 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,
8 550 U.S. 544, 550 (2007) (citations omitted). A complaint must proffer “enough facts to state a
9 claim for relief that is plausible on its face.” *Id.* at 555.

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a
11 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged
12 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.
13 42, 48 (1988).

14 **LEGAL CLAIMS**

15 Plaintiff alleges freezing temperatures, mold, and inadequate bedding in solitary
16 confinement in PBSP’s Short-Term Restricted Housing Unit. He alleges these conditions were
17 not improved nor was he moved to a different cell despite his repeated complaints about these
18 conditions. He alleges that Defendants Chief Engineer R. Waters, Correctional Officer
19 Ater/Velasquez, and Sergeant Puente caused these conditions to arise and/or failed to remediate
20 them. He further alleges the supervisory Defendants --- Associate Warden Bell, Captain Perry,
21 and Sergeant Puente --- knew about and failed to remediate the conditions Plaintiff alleges,
22 inadequately supervised employees in Plaintiff’s unit, and failed to create adequate policies and
23 procedures for reporting and fixing problems the problems that arose in the unit. When liberally
24 construed, Plaintiff’s allegations state a claim that is capable of being judicially heard and decided
25 against Defendants for violating his Eighth Amendment rights.

26 **CONCLUSION**

27 For the foregoing reasons,

28 1. Defendants Associate Warden Bell, Captain Perry, Sergeant Puente, Chief Engineer R.

1 Waters, and Correctional Officer Ater/Velasquez shall be served at Pelican Bay State Prison.

2 Service shall proceed under the California Department of Corrections and Rehabilitation's
3 (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance
4 with the program, the Clerk is directed to serve on CDCR via email the following documents: the
5 Amended Complaint (ECF No. 18), this Order, a CDCR Report of E-Service Waiver form, and a
6 summons. The Clerk also shall serve a copy of this Order on the Plaintiff.

7 No later than 40 days after service of this order via email on CDCR, CDCR shall provide
8 the Court a completed CDCR Report of E-Service Waiver advising the Court which Defendant(s)
9 listed in this order will be waiving service of process without the need for service by the United
10 States Marshal Service (USMS) and which Defendant(s) decline to waive service or could not be
11 reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the
12 California Attorney General's Office which, within 21 days, shall file with the Court a waiver of
13 service of process for the Defendant(s) who are waiving service.

14 Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each
15 Defendant who has not waived service according to the CDCR Report of E-Service Waiver a
16 USM-205 Form. The Clerk shall provide to the USMS the completed USM-205 forms and copies
17 of this Order, the summons, and the operative complaint for service upon each Defendant who has
18 not waived service. The Clerk also shall provide to the USMS a copy of the CDCR Report of E-
19 Service Waiver.

20 2 To expedite the resolution of this case:

21 a. No later than **August 11, 2023**, Defendants shall file a motion for summary
22 judgment or other dispositive motion. The motion shall be supported by adequate factual
23 documentation and shall conform in all respects to Federal Rule of Civil Procedure 56 and shall
24 include as exhibits all records and incident reports stemming from the events at issue. If
25 Defendants are of the opinion that this case cannot be resolved by summary judgment, they shall
26 so inform the Court prior to the date the summary judgment motion is due. All papers filed with
27 the Court shall be promptly served on Plaintiff.

28 b. At the time the dispositive motion is served, Defendants shall also serve, on a

1 separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th
2 Cir. 1998) (en banc). *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

3 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
4 Court and served upon Defendants no later than **September 11, 2023**. Plaintiff must read the
5 attached page headed "NOTICE -- WARNING," which is provided to him pursuant to *Rand v.*
6 *Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

7 d. Defendants shall file a reply brief no later than **September 25, 2023**.

8 e. The motion shall be deemed submitted as of the date the reply brief is due. No
9 hearing will be held on the motion unless the Court so orders at a later date.

10 3. All communications by the plaintiff with the court must be served on defendants, or
11 defendants' counsel once counsel has been designated, by mailing a true copy of the document to
12 defendants or their counsel.

13 4. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No
14 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required
15 before the parties may conduct discovery.

16 Plaintiff is reminded that state prisoners inmates may review all non-confidential material
17 in their medical and central files, pursuant to *In re Olson*, 37 Cal. App. 3d 783 (Cal. Ct. App.
18 1974); 15 California Code of Regulations § 3370; and the CDCR's Department Operations
19 Manual §§ 13030.4, 13030.16, 13030.16.1-13030.16.3, 13030.21, and 71010.11.1. Requests to
20 review these files or for copies of materials in them must be made directly to prison officials, not
21 to the court.

22 5. Plaintiff must keep the court informed of any change of address and must comply with
23 the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for
24 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

25 **IT IS SO ORDERED.**

26 Dated: May 12, 2023


27 JACQUELINE SCOTT CORLEY
28 United States District Judge

NOTICE -- WARNING (SUMMARY JUDGMENT)

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact-- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.